Florida decree awarding Armstrong, the petitioner, a divorce, and denying Mrs. Armstrong, the respondent, alimony, as required by the provisions of Article IV of the Constitution of the United States.

While it is true service in Florida on the respondent, Mrs. Armstrong, was only by publication, nevertheless a copy was mailed to her and she had full knowledge of the proceedings, but she deliberately refused to appear. Furthermore, the decree was granted by a court of the matrimonial domicile. By her failure to appear Florida had a right to fully adjudicate all matters, as was done in Virginia in *Thompson* v. *Thompson*, and the Ohio courts had no right to relitigate the question of alimony four months later. The question had been fully and completely adjudicated by the Florida Court.

REASONS FOR GRANTING THE WRIT

These exact facts have not been before this court since *Thompson* v. *Thompson*, 226 U. S. 551. This court has never applied the doctrine of divisible divorce to this set of circumstances. In all other cases decided by this court either there were previous decrees of alimony, or the husband had obtained a divorce by establishing a residence in a state other than the matrimonial domicile.

However, in this case the facts are entirely different. Florida was the matrimonial domicile and it was the only state at the time of the divorce action that could fully adjudicate all rights of divorce and alimony. The husband, Armstrong, the petitioner, stayed in Florida, the matrimonial domicile, and the wife fled to Ohio. On April 16, 1951, when Armstrong filed suit in Florida, since it was the matrimonial domicile of both parties, Florida was the only state at that time that could completely adjudicate the marital difficulties of the parties. Furthermore, we contend, since Mrs. Armstrong had full knowledge of the proceed-

ings and deliberately refused to appear, that this fact differentiates all other cases where the doctrine of divisible divorce was applied. Cf *Scherrer* v. *Scherrer*, 334 U. S. 343.

While the Supreme Court of Ohio attempts to distinguish the case of *Thompson* v. *Thompson*, 226 U. S. 551, on the ground that the decree in Virginia foreclosed an alimony action in the District of Columbia, the actual ruling of this court was that the court decree of the matrimonial domicile, not just the statutes, had to be given full faith and credit. Furthermore, this principle of the recognition of the decree rendered in the matrimonial domicile has never been set aside. In fact on June 7, 1948, this court in *Estin* v. *Estin*, 334 U. S. 541, 546, footnote 4, said:

> "The case is unlike *Thompson* v. *Thompson*, 226 U. S. 551, 57 L. Ed. 347, 93 S. Ct. 129, where the wife by her conduct forfeited her right to alimony under the laws of the State of the matrimonial domicile where her husband obtained the divorce, and hence could not retain a judgment for maintenance subsequently obtained in another jurisdiction."

So we say that the facts here are similar to those in the *Thompson* case. By fleeing from Florida, the state of the matrimonial domicile, Mrs. Armstrong lost her right to go elsewhere and seek alimony. It is that part of the decree denying her alimony to which the Ohio courts failed to give full faith and credit.

The Ohio court, apparently sensitive about being reversed, finally seemed to bottom its decision on *May* v. *Anderson*, 345 U. S. 528, which was a case involving custody of a child, and in such case it was pointed out by Justice Frankfurter generally that responsibilities to children "give rise to interests different" from "property, personal claims and even marriage status." Concurring opinion *May* v. *Anderson*, 345 U. S. 528, 535, 536.

The Ohio Supreme Court denied full faith and credit to part of the Florida decree on the ground that the denial of alimony to the wife is a decree "in personam and requires either an appearance by, or lawful service on the wife, in order to have extraterritorial effect." It arrives at this conclusion by stating that a divorce decree is not one *in personam*, but one denying alimony or awarding ailmony is *in personam*.

Distinctions between decrees *in personam* and *in rem* and attempts to classify actions in such categories have long since lost their validity. See *Mullane* v. *Hanover Bank & Trust Co.*, 339 U. S. 306, 312. Such distinctions do no more than beg the issue. To uphold such a distinction it is necessary to say that an action to sever marital ties is half *in rem* and half *in personam*. Such distinctions defeat not only the right of Florida, the state of matrimonial domicile, to adjudicate marital difficulties completely, but prevent every other state from so doing. As pointed out by the late Justice Jackson, personal jurisdiction should only be necessary where there is a contrived domicile (see *May* v. *Anderson*, 345 U. S. 528, 539, 540), but it should not be applicable to defeat the jurisdiction of the matrimonial domicile to fully adjudicate all matters pertaining to the status of marriage. There must be limits to the doctrine of divisible divorce unless fleeing spouses are to be rewarded by their flight from their home state where the facts are known the best and are most readily available. The full faith and credit clause should not be overruled by a fictitious classification into actions *in rem* and actions *in personam*. See concurring opinion of Justice Frankfurter in *Williams* v. *North Carolina*, 317 U. S. 287, 306, 307.

We submit that the same rule should apply in divorce decrees as to full faith and credit and recognition as it does in other civil actions. If service by publication is sufficient for the settlement of accounts of a trust fund where the

beneficiaries live outside the state, it should be sufficient in the matrimonial domicile where the fleeing spouse had actual notice and full opportunity to appear, and deliberately refused to do so. As said by Justice Jackson in *Mullane* v. *Hanover Bank and Trust Co.*, supra 314:—

> "Personal service has not in all circumstances been regarded as undispensable to the process due residents, and it has more often been held unnecessary as to nonresidents."

Mrs. Armstrong's rights on October 1951 were to be determined by Florida law and not by Ohio law, since they did not have their matrimonial domicile in Ohio.

The apparent discarding of the doctrine of matrimonial domicile was designed to permit recognition of migratory divorces. It thus took away from the state of the matrimonial domicile exclusive jurisdiction in divorce. It was never intended, however, to limit the state of the matrimonial domicile in its right to entirely settle marital difficulties of its own citiezns, and thus overrule *Thompson* v. *Thompson*. That is why Mr. Justice Douglas was particular in distinguishing the facts in the *Thompson* case in his opinion in *Estin* v. *Estin*. We maintain that Florida, as the matrimonial domicile, had jurisdiction to settle all marital difficulties, and its decrees should be recognized by all other states.

The closest case to this is *Kreiger* v. *Kreiger*, 334 U. S. 555, but this case presents three important issues which were not passed on in *Kreiger*, and which this court has not passed upon since *Thompson* v. *Thompson*. *First*, the Florida decree *denied* the wife alimony, while the decree in *Kreiger* was silent. *Secondly*, the decree in this case was granted in Florida, the matrimonial domicile of both parties, and not in a state where the parties had to establish a domicile. *Third*, Mrs. Armstrong, although served only

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IN THE

Supreme Court of the United States

October Term, 1954

No. [redacted]

RAYMOND C. ARMSTRONG,

Petitioner,

v.

MARY R. ARMSTRONG,
GENERAL MOTORS CORPORATION, et al.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

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To the Honorable the Chief Justice and the Associates Justices of the Supreme Court of the United States:

Petitioner, Raymond C. Armstrong, prays that a writ of certiorari issue to review the order and judgment entered by the Supreme Court of Ohio on December 15, 1954, and the order denying the application for re-hearing, entered January 5, 1955.

OPINIONS BELOW

The opinion of the Supreme Court of Ohio is reported in 162 Ohio St. 406 (advance sheets, Ohio Bar, issue of Decem-

ber 20, 1954). The opinion of the Court of Appeals is not yet reported, but is attached hereto as an appendix. The Court of Common Pleas of Hamilton County, Ohio, did not render an opinion other than the court order of July 18, 1953, hereto attached in the appendix.

JURISDICTION

The judgment of the Supreme Court of Ohio was entered on December 15, 1954, and an application for re-hearing, filed in accordance with Rule XX of the Rules of the Supreme Court of Ohio, was denied January 5, 1955. The jurisdiction of this Court is invoked under the provisions of 28 U. S. Code, Section 1257 (3). The courts of Ohio, contrary to the provisions of Section I, Article IV, of the Constitution of the United States, refused to give full faith and credit to the entire decree in Florida, which awarded the petitioner, Raymond C. Armstrong, a divorce, and denied alimony to his wife, Mary C. Armstrong, the respondent. The Ohio court recognized the decree for divorce, but refused to give full faith and credit to the portion denying the wife alimony. Petitioner states that the distinction made is contrary to the decision in *Thompson* v. *Thompson*, 226 U. S. 551, which was cited with approval as late as June 7, 1948, in *Estin* v. *Estin*, 334 U. S. 541, 546, footnote 4. It presents a clear constitutional question under 28 U. S. Code, Section 1257 (3).

QUESTION PRESENTED

The sole question is whether the courts of Ohio, under Article IV of the Constitution of the United States, are compelled to give full faith and credit to the *entire* decree, granting a divorce, and denying alimony, rendered by the court in Florida, the matrimonial domicile of the parties, following the decision of *Thompson* v. *Thompson*, 226 U. S. 551. While the Florida decree was rendered only after

service by publication, the undisputed evidence shows that the wife, at the time, had not acquired a domicile in Ohio, that she had full knowledge of the action in Florida, and had ample opportunity to appear, but deliberately refused to do so. The procedure fully complied with the test in *Mullane* v. *Hanover Bank and Trust Co.*, 339 U. S. 306.

The Ohio court applied the doctrine of divisible divorce, recognizing the validity of the Florida decree for divorce, but refused to recognize that portion of the decree denying alimony to the wife. If this decision is permitted to stand, one spouse fleeing from the matrimonial domicile can prevent every court in the country from fully settling their marital difficulties.

We recognize that this court has established the doctrine of divisible divorce where the husband obtains a divorce only by publication (*Estin* v. *Estin*, 334 U. S. 541, *Esenwein* v. *Pennsylvania*, 325 U. S. 279), but it has never extended the doctrine to apply so as to oust the courts of the matrimonial domicile from jurisdiction to adjudicate the marital difficulties. In all previous cases the husband left the matrimonial domicile and established a residence elsewhere and obtained a divorce. This court held that under such a situation a previous order for maintenance and support survived the divorce action. Some states have permitted alimony to be rendered subsequently, but as was pointed out by Chief Judge Stephens of the Court of Appeals of the District of Columbia, in his dissent in *Hopson* v. *Hopson* (decided January 20, 1955, No. 11558, Dockets of U. S. C. A. D. C.), F. (2d) , 23 U. S. Law Week 2354, there is substantial authority that an unadjudicated claim for maintenance, alimony or support does not survive a decree in a foreign state. See also *Peff* v. *Peff*, 2 N. J. 513, 67 Atl. (2d) 161; *DeYoung* v. *DeYoung*, 27 Cal. (2d) 521, 165 Pac. (2d) 547.

Some of the state courts, as Judge Stephens points out, follow *Thompson* v. *Thompson*, 226 U. S. 551, while others disregard it, and apply the doctrine of divisible divorce. This court should not leave the law of divorce in such an unsettled state, but state clearly that the doctrine of divisible divorce should not be applied in favor of those who flee from the matrimonial domicile, and with full knowledge of the facts, refuse to return and defend the action.

While this court has placed less emphasis on domicile in recent years, it has not considered the effect of extending the doctrine to deprive a state of the matrimonial domicile from fully adjudicating all marital problems.

The decision of the Ohio Supreme Court on service by publication cannot be reconciled with *Mullane* v. *Hanover Bank & Trust Co.*, 339 U. S. 306. It would seem that the true question is, "How divisible is a divisible divorce?" (23 Univ. of Cincinnati Law Rev. 349). Shall it be applied relentlessly no matter what the facts, or should the entire doctrine, starting with *Williams* v. *North Carolina*, 317 U. S. 287, be revisited, and limited to facts which will not reward a spouse, who flees to prevent adjudication of marital difficulties.

The decision of the Supreme Court of Ohio is directly opposed to *Thompson* v. *Thompson*, 226 U. S. 551, which was recognized as the law as late as June 7, 1948. See *Estin* v. *Estin*, 334 U. S. 541, 546, footnote 4.

STATUTES INVOLVED
UNITED STATES

The first section of Article IV of the Constitution of the United States is primarily involved:—

> "Section 1. Full Faith and Credit.—Full Faith and Credit shall be given in each State to the public Acts, Records and judicial Proceedings of every other State.

And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

FLORIDA

The sections of the Florida statutes provide:

"Ch. 65 Sec. 65.06. Bills for divorce may be brought against defendants residing out of the state, and service shall be effected upon them as in other cases in chancery.

"Ch. 48 Sec. 48.01. Service of process by publication may be had in any of the several courts of the state and upon any of the parties mentioned in 48.02 in any suit or proceedings:—

* * * * * * *

"4. For divorce or annulment of marriage;

* * * * * * *

"10. In any other suit or proceeding, not hereinabove expressly mentioned, wherein personal service of process or notice is not required by the statutes or constitution of this state or by the constitution of the United States."

OHIO

Section 3105.03

"Except in an action for alimony alone, the plaintiff shall have been a resident of the state at least one year immediately before filing the petition. Actions for divorce or for alimony shall be brought in the county of which the plaintiff is and has been a bona fide resident for at least ninety days immediately preceding the filing of the petition, or in the county where the cause of action arose. The court of common pleas shall hear and determine the case, whether the marriage took place, or the cause of divorce occurred, within or without the state."

STATEMENT OF CASE

Raymond C. Armstrong and his wife, Mary C. Armstrong, were married on June 18, 1917, at Cincinnati, Ohio. In 1922 or early 1923 they left Ohio and took up their residence in Florida. Aside from a short period of time spent in the Isles of Pines from 1925 to 1928, they have ever since been residents, voters and taxpayers of Miami, Florida. The undisputed evidence was that since 1928 their matrimonial domicile has been at Miami, Florida.

Friction developed between the Armstrongs, and in October, 1950, Mrs. Armstrong left Florida and came to Ohio. On April 16, 1951, Armstrong filed suit in the Circuit Court of Dade County, Florida for a divorce. Service was obtained by publication and a copy mailed to Mrs. Armstrong, and she employed an Ohio attorney and actually had notice of the proceedings. However, she did not return to Florida, and made no personal appearance in the suit. Instead, upon receiving notice by publication which was mailed to her, her attorney wrote to Armstrong's attorney on May 22, 1951:

> "I do not intend to enter Mrs. Armstrong's appearance in the complaint for divorce. I presume that complaint will result in a decree, and that you will prosecute that matter to an early conclusion. That being so, the allegations of the complaint are such that I shall be compelled in proceedings to be filed here to claim the decree was procured upon false allegations." (R. 303).

Under the Ohio law Mrs. Armstrong would not have been considered a resident of Ohio for the purpose of filing an action for divorce until November 10, 1951 (R. 46). Section 3105.03, Ohio Revised Code (eff. 10-1-53), formerly Section 8003-3, Ohio General Code (eff. 8-1-51), formerly Section 11980, Ohio General Code.

On October 2, 1951, upon presentation of the report of the Master Commissioner, the Circuit Court of the Eleventh Judicial District of Dade County, Florida, *granted Armstrong a divorce and denied Mrs. Armstrong alimony* (R. 246-9).

Subsequently, in fact four months later, on February 1, 1952, Mrs. Armstrong filed an action for divorce and alimony in the Court of Common Pleas of Hamilton County, Ohio, against Armstrong, claiming the Florida decree had been obtained by fraud. Armstrong entered his appearance, and in his answer set up that the Florida "court had full and complete jurisdiction over the subject matter" and the persons, and that the Florida decree precluded any action in Ohio (R. 7).

Upon hearing, the Court of Common Pleas of Hamilton County, Ohio, held it had to give full faith and credit to the divorce decree entered in Dade County, Florida, and then under the doctrine of divisible divorce "held that were it not for the Florida decree Mrs. Armstrong would be entitled to a divorce," and proceeded to allow her alimony, consisting of considerable cash, jewelry, and 1,250 shares of General Motors stock, or approximately half of the property owned by Armstrong (App. C, p. 9a-10a).

On appeal, both the Court of Appeals and the Supreme Court of Ohio affirmed the judgments *in toto*. Both courts held that the Ohio courts had to give full faith and credit to the Florida decree for divorce, but because service was only by publication in the Florida action, also held that the Ohio courts could still award alimony to Mrs. Armstrong. Both courts attempted to distinguish the ruling in *Thompson* v. *Thompson*, 226 U. S. 551.

SPECIFICATIONS OF ERROR

The sole ground of error is that the Supreme Court of Ohio erred in not giving full faith and credit to the entire

by publication, received notice, had full opportunity to appear, and deliberately declined to do so. These three factors distinguish the case from all others, and present matters upon which this court should pass.

In a very splended article by J. H. C. Morris of Oxford University, entitled "*Divisible Divorce*," in 64 Harv. Law Rev. 1287, he points out specifically at page 1293 that the facts in this case present the type of question that should be clarified. If *Thompson* v. *Thompson* is to be overturned, which we think it should not be, it should be by this court and not by a state court, as a federal constitutional question is involved. The article of Mr. Morris further shows that this court has never completely abandoned the significance of the matrimonial domicile.

If this case is not reviewed and reversed, let us examine the chaotic conditions that will result. A wife living in Cincinnati, Ohio, could go to Kentucky, West Virginia or Indiana, stay there so that service could be made only by publication, and a husband could never get his marital matters settled. Perhaps more tragic is what did actually happen in Kentucky. A husband living with his wife in Kentucky, the matrimonial domicile; taking with him all of his property, crossed the river and came to Cincinnati, Ohio. The wife is still trying vainly to obtain in Kentucky, the matrimonial domicile, an alimony award for her support. She has failed to date because she can not obtain personal service on her husband. If this decision remains, flight of one spouse from the matrimonial domicile is to be rewarded, as it leaves the courts of the matrimonial domicile powerless to adjust any financial affairs between husband and wife. We maintain that a simple rule of granting entire full faith and credit to the decrees of courts of the matrimonial domicile should be enforced, particularly when the fleeing spouse had notice and full opportunity to appear.

In conclusion, we submit that if a motorist by merely using the highways of the state consents to jurisdiction in tort actions (*Hess* v. *Pawloweski*, 274 U. S. 352), certainly married couples who live for twenty-two years in one jurisdiction have likewise consented to the jurisdiction of the courts of the state in which they live to adjudicate their rights. That jurisdiction should continue until one or the other has acquired a domicile elsewhere. Such acquisition of a new domicile was not claimed by Mrs. Armstrong either at the time the suit of Armstrong was filed, or when it was tried.

If this rule of Ohio prevails, a wife could flee from the matrimonial domicile say to California, and twenty years later, when passing through, the husband could face an alimony action which he thought had been fully adjudicated in the matrimonial domicile.

CONCLUSIONS

We submit that the principal of giving full faith and credit to the entire decree for divorce entered by the courts of the state of the matrimonial domicile, as announced in *Thompson* v. *Thompson*, 226 U. S. 551, is the only sound rule. If it were not still the law, there would have been no necessity to distinguish it in *Estin* v. *Estin*, 334 U. S. 541, 546, footnote 4.

Because the Supreme Court of Ohio did not give entire full faith and credit to the Florida decree, the petition for a writ of certiorari should be granted, and the Supreme Court of Ohio reversed.

Respectfully submitted,

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